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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 22nd January 2015

No. 772—IR-(ID) 40/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th November 2014 in Industrial Dispute Case No. 52/2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s Triveni Earth Movers Pvt. Ltd., At/P.O. Baneikala, P.S. Joda, Dist. Keonjhar and their workman Shri Japani Nayak was referred to for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 52 OF 2012

Dated the 12th November 2014

Present :

Shri Saroj Kumar Sahoo, O.S.J.S. (Jr. Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of . . . First Party—Management
M/s Triveni Earth Movers Pvt. Ltd.,
At/P.O. Baneikala,
P.S. Joda,
Dist. Keonjhar.

And

Its Workman, . . . Second Party—Workman
Shri Japani Nayak,
S/o Jayakrishna Nayak,
At Barapada, P.O. Rajas,
Via Rench, P.S. Balipatna,
Dist. Khurda.

Appearances :

Shri Arabinda Rout, . . . For the First Party—Management
Dy. Manager (HR)

Shri Japani Nayak . . . For the Second Party—Workman

AWARD

The Government of Odisha, in Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section(5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 9868— IR-(ID)-40/2012-LESI., dated the 1st December 2012 :—

"Whether the refusal of employment to Shri Japani Nayak with effect from the 28th September 2010 by the management of M/s Triveni Earth Movers Pvt. Ltd. is legal and/or justified ? If not, what relief Shri Nayak is entitled to ?"

2. The case of the second party workman is that he was engaged as a Heavy Vehicle Driver under the first party management from 1-1-2003 to 23-9-2010 on a monthly pay of Rs. 5300. On 28-9-2010 he was terminated by the first party management without any notice, notice pay or compensation. The first party management has not followed the principles of natural justice at the time of termination of the second party. After his termination, the second party had submitted several representations which were in vain. Pradip Kumar Muduli, Biswajit Swain, S.N. Ojha, Basudev and others who were junior counterpart employees were given employment by the first party management. The management has not followed the 'last come first go' policy. After getting a news about the delivery pain of his wife on 18-9-2010 the second party workman had applied for leave for 20 days from 19-8-2010 which was sanctioned by the authority. On 1-9-2010 a son was born to the second party at Government Hospital, Unit VI, Bhubaneswar. As there was nobody to look after his wife the second party had sent a leave application along with the medical papers to the management for extension of leave on 8-9-2010. The said letter was sent through Under Certificate of Posting, which was received by the first party organisation. An explanation was called for from the second party on 13-9-2010 and the reply was submitted to the management by the second party in due date. On 24-1-2012 a charge sheet was issued to the second party for his unauthorised absence. The second party was not absent from his duty unauthorisedly, but he was not allowed to join on 28-9-2010. Without any enquiry, illegally the second party was terminated from his service. The first party management has violated Sections 25-F, 25-G and 25--H of the Industrial Disputes Act, 1947.

3. On the other hand, the first party management has filed its written statement. The case of the first party management is that the present reference received from the Government of Odisha is not maintainable. This Court has no jurisdiction to adjudicate on the present dispute between the parties. On 28-9-2010 the second party workman was in employment. So, the date of termination mentioned in the reference as 28-9-2010 is wrong. There was no dispute in between the parties on 28-9-2010. After a due enquiry in a disciplinary proceeding, the second party was dismissed from

his service on 11-5-2010.. TThe second party is a habitual defaulter in returning to his duties after availing leave. Although sufficient opportunities were given to the second party workman, he did not choose to contest the domestic enquiry conducted by the first party management against him. The second party workman is not entitled to any relief.

4. Taking into consideration the pleading of the parties, the following issues are framed :—

ISSUES

- (i) "Whether the refusal of employment to Shri Japani Nayak, with effect from the 28th September 2010 by the management of M/s Triveni Earth Movers Pvt. Ltd. is legal and/or justified ?
- (iii) If not, what relief Shri Nayak is entitled to?"

5. The second party is examined as W.W.1 and Exts.1 to 8 are marked. Ext.1 is the photo copy of letter Dt. 13-9-2010 of DGM, Road Project, Ext.2 is the photo copy of the charge sheet Dt. 24-1-2012 issued by the management to second party, Exts.3 to 8 are the photo copies of letters issued by the second party to the first party management. On the other hand, two witnesses are examined on behalf of the first party management and Exts. A to AA are marked. Ext. A is the photo copy of the warning letter Dt. 2-10-2010, Ext.B is the photo copy of the letter Dt. 7-2-2012 issued to the second party. Ext.C is the photo copy of the charge sheet Dt. 6-3-2012, Ext.D is the photo copy of enquiry notice Dt. 12-3-2012, Ext.E is the photo copy of the letter Dt. 29-2-2012 issued by the second party to the first party management, Ext.F is the photo copy of letter Dt. 17-3-2013 issued to the second party, Ext.G is the photo copy of letter issued by the second party Dt. 22-3-2012, Ext.H is the photo copy of letter Dt. 26-3-2012 issued to the second party. Ext.J is the photo copy of letter Dt. 29-3-2012 to the second party. Ext. K is the photo copy of the second show-cause notice Dt. 21-4-2012 issued to the second party, before termination. Ext.L is the photo copy of the termination letter Dt. 11-5-2012 issued to the second party. Ext.M is the leave application form submitted by the second party, Ext. N is the charge sheet Dt.. 24-1-2012 issued to the second party. Ext.Q is the photo copy of the letter issued to tthe second party on 24-3-2012, Ext.R is the letter Dt. 24-3-2012 issued by the Deputy Manager to the enquiry officer, Ext.S is the photo copy of list of witnesses of the management Dt. 24-3-2012, Ext.T is the letter Dt. 26-3-2012 of Enquiry Officer to the Project Head, Road Project, Ext.U is the letter issued by the Deputy Manager, Project Head, Road Project Dt. 28-3-2012 to the Enquiry Officer, Ext.V is the enquiry report submitted by the enquiry officer, Ext.W is the show-cause notice issued to the second party on 24-4-2012, Ext.Y is the failure report submitted by the Conciliation Officer Dt. 30-4-2012, Ext.Z is the enquiry notice Dt. 12-3-2012 issued to the second party, Ext.AA is the attested true copy of the order passed by the Assistant Labour Commissioner, Keonjhar.

FINDINGS

6. *Issue Nos.(i)* —Under this issue, it is to be decided whether the refusal of employment to the second party workman Shri Japani Nayak with effect from the 28th September 2010 by the management of M/s Triveni Earth Movers Pvt. Ltd. is legal or not. In his statement of claim filed by the second party workman, he has claimed that he served under the first party management from 1-1-2003 till 27-9-2010 but illegally terminated from his service on 28-9-2010. It is also mentioned

his statement of claim that on 24-1-2012 a charge sheet relating to unauthorised absence was issued to the second party for which he has submitted his reply on 20-9-2010 along with the medical certificate. It is also alleged by the second party workman that without holding any enquiry or proceeding the first party management terminated his service. On the other hand in its written statement the first party management has stated that the second party workman was on leave from 19-8-2010 to 7-9-2010 but after completion of leave period, he did not turn up to duty for which a domestic enquiry was conducted following the procedure provided by law, and finally on 11-5-2012 the second party workman was terminated from his service as he was found guilty in the domestic enquiry. The second party workman is examined as W.W. No.1. In his evidence he admitted that on 18-9-2010 he had applied for leave which was sanctioned by first party management and on 8-9-2010, he has prayed for extension of leave for another 20 days which was communicated to the management through Under Certificate of Posting. He further deposed that after expiry of the leave period when he approached the first party management to resume his duty, he was refused. Ext.M is the leave application which was submitted by the second party workman to the management. On perusal of Ext.M it transpires that leave was allowed to the second party workman till 7-9-2010. Admittedly, the second party has not joined in his duty on 8-9-2010, i.e. after expiry of the leave period sanctioned to him. It is claimed by the second party that he had sent an application for extension of leave on 8-9-2010 through Under Certificate of Posting. Ext.4 is the copy of the said leave application Dt. 8-9-2010. There is no material before the Court that the first party management has received the said letter for extension of leave submitted by the second party workman. Ext.3 is the copy of the so called joining report of the second party before the management. W.W.1 in his evidence deposed that on 28-9-2010 he has submitted his joining report before the management. No other witness is examined to corroborate such evidence of W.W.1. There is also no endorsement on Ext.3 that the management has received the joining report from the second party. The evidence of W.W.1 that on 28-9-2010 he has submitted his joining report to the management is not reliable and trustworthy. It is the specific case of the management that due to unauthorised absence of the second party a domestic enquiry was conducted against the second party workman and after he was found guilty in the domestic enquiry, he was terminated from his service. Ext. A to L are marked on behalf of the first party management on admission by the second party workman during his cross-examination. Some other documents were proved by the witnesses examined on behalf of the management. Ext.A is the warning letter issued to the second party by the management on 2-10-2010 due to his unauthorised absence from his duty. Ext.C is the copy of the charge sheet Dt. 6-3-2010. Ext.B shows that the second party was asked to submit his examination as he failed to file explanation in time. Ext.D is the enquiry notice which has been issued to the second party. On perusal of the documents relating to the domestic enquiry, it is clear that in spite of sufficient opportunity given to the second party workman, he did not turn up to defend himself in the domestic enquiry. From the own admission of the second party during his cross-examination it is also clear that he has received all the communications made by the management relating to the domestic enquiry conducted against him. There is no reason why the second party workman did not turn up to defend himself in the domestic enquiry conducted against him. Ext.V is the enquiry report which has been submitted by the Enquiring Officer. Ext.K is the notice issued to the second party by the first party management on 21-4-2012 in which the second party was asked to file show -cause why

he should not be punished as he was found guilty in the enquiry conducted by the Enquiring Officer. Although, it was sent to the second party through Regd. Post with A.D., the second party did not submit his show cause. Ext.L is the termination notice which has been issued to the second party workman by the management through Regd. Post with A.D. on 11-5-2012. On perusal of the evidence of the witnesses examined on behalf of the first party management and the documents relied on by it, it is crystal clear that due to unauthorised absence of the second party workman a domestic enquiry was conducted against him by the Enquiring Officer who found him guilty. It is also clear from the evidence on record that in spite of sufficient opportunities were given to the second party workman, he did not choose to defend himself in the enquiry. Basing on the report submitted by the Enquiring Officer vide Ext.V, the second party workman was terminated from his service with immediate effect, i.e. from 11-5-2012. So it cannot be said that the second party workman was refused employment with effect from the 28th September 2010 by the first party management. The termination of the second party was also legal and justified. This issue is answered against the second party workman.

7. *Issue No. (ii)*—In view of my findings under issue No.i, the second party workman is not entitled for any other relief or reliefs.

The reference is disposed of accordingly.

Dictated and corrected by me.

S. K. SAHOO
12-11-2014
Presiding Officer
Labour Court
Bhubaneswar

S. K. SAHOO
12-11-2014
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government